IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 808 of 1998
in
SPECIAL CIVIL APPLICATION No 8182 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REGIONAL MANAGER, BANK OF BARODA
Versus
GITABEN HARIBHAI DARJI DECEASED THROUGH HER L/R

Appearance:
1. LETTERS PATENT APPEAL No. 808 of 1998
MR DARSHAN M PARIKH for Appellant No.
..... for Respondent No. 1
MR MUKESH H RATHOD for Respondent No. 1/1-1/4

CORAM : HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 29/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.S.GARG)

1. Heard learned counsel for the parties.

2. Bank of Baroda, the appellant, being aggrieved by the order dated 8/5/1998 passed in Special Civil Application No.8182 of 1997 upholding the order dated 4/4/1997 passed by the concerned Tribunal in Central Recovery Application No.1/1989, exercising jurisdiction under Section 33(C)(2) of the Industrial Disputes Act, is before this Court. It appears that the workman since deceased, was an employee as a part-time daily wager with effect from 11/11/1976 for the purposes of fetching water, sweeping the floors, etc. She was removed from services on 8/7/1997 and after some conciliation, she was reinstated on 11/7/1997. She made an application under Section 33(C)(2) of the Industrial Disputes Act, submitting, inter alia, that as she was working as a full time daily wager, she was entitled to the grade and pay-scale of a Class-IV employee. The appellant contested the issue tooth and nail and submitted that she was not in the regular rolls nor she was the daily wager but, in fact, she was a part-time employee and she was required to work for less than six hours in a week, her status was also denied. The learned Tribunal, after recording the evidence and hearing the parties, observed that as she had been working between 6 to 13 hours a week, therefore, in accordance with the settlement arrived at between the establishment and the workmen, she would be entitled to 50% of the salary of the regular pay-scale. The appellant challenged the order before the learned Single Judge but being unsuccessful, is before this Court.

3. Learned Counsel for the appellant submitted that in deciding the application filed under Section 33(C)(2), the Court would have jurisdiction to direct recovery of the amount if there is a predetermined right or under the Law, when a particular person is entitled to a particular relief or amount and not in a case where the status or particulars are disputed. Placing reliance upon certain judgments of the Supreme Court, it was submitted that, the Labour Court would have no jurisdiction under Section 33(C)(2) of the I.D. Act to decide the question of entitlement and as such, the Tribunal was not entitled to pass order, which could be passed only under Section-10 of the I.D.Act. A reference was also made to the judgments of the Supreme Court in the matters of Central

Inland Water Transport Corporation Ltd., vs. The Workman & Anr., [A.I.R. 1974 SC 1604], Shri Yovan, India Cement Employees Union and Anr Vs. Management of India Cements Ltd. & Ors., A.I.R.1994, S.C.558 and Municipal Corporation of Delhi Vs. Ganesh Razak and Anr.,1995 Volume - I SCC 235. It was also submitted that the application filed under Section 33(C)(2) was not maintainable, specially when the recovery application itself said that the workman had already raised the demands.

4. Learned counsel for the respondent, however, submitted that the fact that the workman was working for more than six hours every week stands proved in light of the admissions made by the witness of the establishment and as the Tribunal had jurisdiction to decide the question in view of the admitted facts and taking assistance from the settlement, the order does not call for any interference and the present appeal deserves to be dismissed.

5. From the above referred judgments of the Supreme Court and number of other judgments of this Court, it is well established that provisions under Section 33(C)(2) of the I.D.Act would apply to a case where the entitlement is not disputed and the status is also admitted. The Supreme Court has observed that the moment a dispute in relation to facts or entitlement is raised, then the Industrial Tribunal or Labour Court would have no jurisdiction to make an award or pass an order exercising its jurisdiction under Section 33(C)(2) of the Act.

6. In the present matter, the entitlement of the petitioner had been seriously disputed. Labour Court had rest its finding on the evidence and the alleged admission made by the witness of the establishment. After marshalling the evidence, it has recorded a finding of fact that the workman was entitled to 50% of the salary in accordance with the settlement. In our considered opinion, any admission made by the witness of the establishment, would not confer jurisdiction upon the Tribunal if it had none to enter into arena of disputed facts and record a finding. The question of decision on the status or the entitlement would be decided in the proceedings under Section 10 of the I.D. Act. Admission or any other evidence would not confer any jurisdiction upon the Tribunal if it did not have the basic jurisdiction and there was inherent lack of jurisdiction.

7. In the present matter, the question of entitlement was beyond the purview of jurisdiction of the Industrial Tribunal. True it is that the Labour Court observed in favour of the workman and the finding has been approved by the learned Single Judge that the workman was entitled to a particular salary in accordance with the settlement, but, that decision was in relation to the entitlement of the workman which in our opinion could not be given in view of the settled legal position.

8. The judgment delivered by the learned Single Judge and the order passed by the learned Industrial Tribunal, in our opinion, cannot be allowed to stand. These deserve to and are accordingly set aside.

9. At this stage, the learned counsel for the respondents submits that during the pendency of this proceedings, the workman had expired and therefore, it may not be possible for anybody to make an application for reference or make demands. In our opinion when the application filed under Section 33(C)(2) of the Act makes a clear mention that demands have already been raised, then, question of reiterating demands would not arise. So far as the question of making the reference is concerned, in our opinion, the legal representatives/successors of the deceased workman would certainly have a right in view of the provisions of the Succession Act to make an application to the Competent Authority for making a reference. It is to be noted that they would not be making a proposal for a reference in relation to a claim which was personal to the workman. In fact, they would be making a request to the Competent Authority to make a reference in relation to the entitlement of the workman and in case, the reference is made and in case they succeed in proving that the deceased was entitled to a particular status and salary the deceased workman was entitled to receive the amount, they would be entitled to an order in their favour. The apprehension expressed by the respondent is unfounded.

10. Appeal deserves to be and is accordingly allowed. No order as to costs.

(R.S.GARG, J.)

(RAVI R.TRIPATHI, J.)

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